

10 September 2018

Ross Francis

By email: fyi-request-8496-5cbdf5a2@requests.fyi.org.nz
fyi-request-8456-29bdd883@requests.fyi.org.nz

Dear Mr Francis

Official Information requests dated 8 August 2018 and 14 August 2018

I refer to your request for information to the Ministry of Justice (**Ministry**) under the Official Information Act 1982 (**Act**) on 14 August 2018. On 8 August 2018, you made a related information request to the Minister of Justice which has been transferred to the Ministry. As a significant proportion of the two requests are identical, we deal with them together in this response.

Your requests were as follows:

[8 and 14 August 2018] *Dr Barry Parsonson's review of the research literature was included in Peter Ellis' first application for the Royal prerogative of mercy in 1997. In March 1998, Justice Ministry officials said his reports cast "considerable doubt on the reliability of the evidence given by the complainants".*

Did officials raise any doubts about the safety of Peter Ellis's conviction, or concerns about the case in general, with Doug Graham in 1998 or 1999? Please supply me with all records of any doubts or concerns that were brought to the attention of Graham or Phil Goff (who succeeded Graham as Justice Minister) between 1 March 1998 and 30 April 2002.

[8 August 2018] *When was the Royal Prerogative of Mercy introduced in New Zealand? Apart from a posthumous pardon for Mokomoko in 1992 (he was executed in 1866), who has been pardoned following an application for the Royal prerogative and in what year did the pardon take place? On average, how many applications are made for the Royal prerogative each year?*

[14 August 2018] *In the Justice Ministry's reply to me dated 1 June 2018, the Ministry states that under "no circumstances" is any lawyer engaged by the Ministry not required to declare an actual or potential conflict of interest. When did this policy come into effect and was it in effect when the Ministerial Inquiry into the Peter Ellis case was established in 2000?*

We have divided your request into three parts, set out below:

1. *"Did officials raise any doubts about the safety of Peter Ellis's conviction, or concerns about the case in general, with Doug Graham in 1998/99 or Phil Goff subsequently? Please supply me with all records of any doubts or concerns that were brought to the attention of Graham and Goff by the Ministry between 1 March 1998 and 30 April 2002."*

The Ministry's advice to the Ministers relating to the case is contained in the briefings and reports provided by the Ministry during this period (relating to the applications for the Royal prerogative of mercy and subsequent inquiries).

In relation to the period from 1998 to 1999, the only document within scope of your request is the Ministry's advice to the Minister regarding the first application for the Royal prerogative of mercy. We are withholding this document under s 9(2)(h) of the Act, as this is privileged legal advice and we do not consider that there are any other considerations in the public interest which render it desirable to make this document available. However, you can find the issues which gave rise to the Government's concern in the terms of the Order in Council which resulted from the first inquiry and referred the matter back to the Court of Appeal, as well as the later decision of that Court. Both of these are public documents.

In relation to the period from 2000 to 2002 (the time period relating to the Ministerial Inquiry), as has been repeatedly stated in our correspondence with you, we have provided you with all information relating to that inquiry.

2. *When was the Royal Prerogative of Mercy introduced in New Zealand? Apart from a posthumous pardon for Mokomoko in 1992 (he was executed in 1866), who has been pardoned following an application for the Royal Prerogative and in what year did the pardon take place? On average, how many applications are made for the Royal prerogative each year?"*

In relation to the introduction of the Royal prerogative of mercy, this information is publicly available. A recent publication states that in 1837 Sir George Gipps, then Governor in Chief of New Zealand, acquired the authority to exercise the prerogative of mercy in New Zealand. That publication, *This Realm of New Zealand: The Sovereign, the Governor-General, the Crown* by Dame Alison Quentin-Baxter and Janet McLean can be purchased online and no doubt accessed through libraries.

The Ministry is aware of four free pardons, apart from Mokomoko's pardon, having been granted pursuant to the Royal prerogative of mercy. They were granted to a Mr Spiller (1941), Mr Brown (1957), Atenai Saifiti (1972) and Arthur Allan Thomas (1979).

We understand that prior to 1961 a conditional pardon was sometimes granted to commute a death sentence to a sentence of life imprisonment. However, the Ministry has no details of these cases.

The remainder of your request has been answered in the Minister's letter to you of 5 March 2018 (which in turn refers to the response to your request of 10 July 2016). As discussed, the Ministry's electronic records regarding the Royal prerogative of mercy go back to 1995. You have already been provided with the relevant figures from that date to the present. Files prior to that date are held offsite at Archives New Zealand. To retrieve the information you request from the period before 1995 would require substantial collation and research, and I accordingly refuse your request under section 18(f) of the Act. To the extent that any information sought is already publicly available, I also refuse your request under section 18(d) of the Act.

We note that the Official Information Act is a mechanism for releasing information already held, not creating new information. While we have been happy to assist with your enquiries in this instance, we would expect much of the above information to be publicly available in relevant texts and online databases. If you have any further questions of this nature you will need to complete your research using the publicly available materials.

3. *"In the Justice Ministry's reply to me dated 1 June 2018, the Ministry states that under "no circumstances" is any lawyer engaged by the Ministry not required to declare an actual or potential conflict of interest. When did this policy come into effect and was it in effect when the Ministerial Inquiry into the Peter Ellis case was established in 2000?"*

The rules regarding a lawyer's declaration of conflicts of interest are not a matter of Ministry policy. The current *Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008* require lawyers to declare potential conflicts of interest to their clients. The previous *Rules of Professional Conduct under the Law Practitioners Act 1982* contained similar obligations which would have applied at the time of the Ministerial Inquiry.

You have the right to complain to the Ombudsman under s 28(3) of the Act and seek a review of this response.

Yours sincerely

A handwritten signature in black ink, appearing to read "Jeff Orr". The signature is fluid and cursive, with the first name "Jeff" and last name "Orr" clearly distinguishable.

Jeff Orr
Chief Legal Counsel